



June 25, 2002

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
Office of the City Attorney
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2002-3435

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164781.

The City of Fort Worth Human Relations Commission (the "FWHRC") received a request for all documents held by the FWHRC pertaining to an employment discrimination complaint filed by a named individual against a named business. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 21.154, 21.204, 21.303, 21.304, and 21.305 of the Texas Labor Code and sections 327.9 and 327.10 of title 40 of the Texas Administrative Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You inform us that the FWHRC was created pursuant to title 21 of the Labor Code. *See* Labor Code § 21.152 (providing for the creation of local commissions). You explain that the Equal Employment Opportunity Commission (the "EEOC") and the Texas Commission on Human Rights (the "Commission") have, by written agreements, deferred jurisdiction to hear complaints to the FWHRC. *See* Labor Code § 21.154; *see also* 40 T.A.C. § 325.4 (authorizing cooperative agreements between Commission and local commissions). The FWHRC is a local agency authorized by sections 21.152 of the Labor Code to investigate complaints, as provided by section 21.204 of the Labor Code. Section 21.204 relates to investigations by the Commission and provides in

relevant part that "[i]f the federal government has referred the complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the executive director or the executive director's designee shall promptly investigate the allegations stated in the complaint." Labor Code § 21.204(b). You state that the federal government deferred jurisdiction to the FWHRC regarding the matter at issue, and that the executive director of the FWHRC investigated the allegations.

You claim that sections 21.303, 21.304, and 21.305 of the Labor Code except the requested information from disclosure. Section 21.304 of the Labor Code concerns the release of Commission information to the public and provides as follows:

An officer or employee of the commission may not disclose to the public information obtained by the commission under Section 21.204 except as necessary to the conduct of a proceeding under this chapter.

Section 21.305 of the Labor Code concerns the release of Commission records to a party to a complaint filed under section 21.201. Section 327.9 of title 40 of the Texas Administrative Code also governs a party's access to Commission records. Section 327.10 of title 40 further provides limitations on the public's access to commission records.¹

You state that the requestor is not a party to the proceeding at issue. We therefore conclude that the submitted information is confidential under section 21.304 of the Labor Code and must therefore be withheld from the requestor under section 552.101 of the Government.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

¹Section 327.10 provides as follows:

(a) No officer or employee of the commission may make public any information obtained by the commission under its authority under the §§Texas Labor Code, 21.201-21.207 (formerly §Texas Revised Civil Statutes Annotated Article 5221k, 6.01), except as necessary to the conduct of a proceeding under this Act.

(b) No commissioner or employee of the commission may make public, without the written consent of the complainant and respondent, information about the efforts in a particular case to resolve an alleged discriminatory practice by conference, alternative dispute resolution, conciliation, or persuasion, whether or not there is a determination of reasonable cause.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325.

Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 164781

Enc. Submitted documents

c: Mr. David Wethe, Reporter
Dallas Business Journal
12801 No. Central Expressway
Suite 800
Dallas, Texas 75243
(w/o enclosures)